

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOVANNY HERNANDEZ,

Petitioner,

v.

CHRISTIAN PFEIFFER,

Respondent.

No. 1:20-cv-01235-DAD-HBK (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 16)

Petitioner is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On June 28, 2021, the assigned magistrate judge issued findings and recommendations, recommending that respondent's motion to dismiss be granted and that the pending petition be dismissed as untimely under the applicable statute of limitations, and in the alternative, for failure to state a cognizable claim to relief. (Doc. No. 16.) Those findings and recommendations were served on petitioner and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. (*Id.*) To date, no objections have been filed with the court and the time in which to do so has since passed.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, the court finds the findings
3 and recommendations to be supported by the record and by proper analysis.

4 In addition, having concluded that the pending petition must be dismissed, the court now
5 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of
6 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an
7 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
8 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds
9 without reaching the underlying constitutional claims, the court should issue a certificate of
10 appealability if the petitioner shows “that jurists of reason would find it debatable whether the
11 petition states a valid claim of the denial of a constitutional right, and that jurists of reason would
12 find it debatable whether the district court was correct in its procedural ruling.” *Slack v.*
13 *McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the court finds that reasonable jurists
14 would not find the court's determination that the petition should be dismissed debatable or wrong,
15 or that petitioner should be allowed to proceed further. Therefore, the court declines to issue a
16 certificate of appealability.

17 Accordingly,

- 18 1. The findings and recommendations issued on June 28, 2021 (Doc. No. 16) are
19 adopted in full;
- 20 2. Respondent's motion to dismiss (Doc. No. 11) is granted;
- 21 3. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 22 4. The court declines to issue a certificate of appealability; and
- 23 5. The Clerk of the Court is directed to close this case.

24 IT IS SO ORDERED.

25 Dated: April 12, 2022

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UNITED STATES DISTRICT JUDGE